



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,082	09/09/2003	Raymond Joseph Reisdorf	TP2685USNA	1429
23906	7590	03/09/2006	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 03/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/658,082	Applicant(s) REISDORF ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
 4a) Of the above claim(s) 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1771

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed December 21, 2005, has been entered. Claims 1 and 4 have been amended as requested. The pending claims are 1-26 with claims 15-26 being withdrawn as non-elected.

2. Said amendment is sufficient to withdraw the 112, 2nd rejections set forth in sections 2-6 of the last Office Action. Additionally, said amendment is sufficient to withdraw the prior art rejections based upon GB 2 284 152 issued to Dupont as set forth in sections 9-13 of the last Office Action. Specifically, applicant has amended the polymer adhesive to *consist* of "one or more block, random or alternating ethylene copolymers." Since Dupont requires the presence of a grafted polymer, the claims are no longer anticipated by cited Dupont reference. Nor are said claims obvious over since omission of the grafted copolymer would destroy the intent of the Dupont invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

Art Unit: 1771

art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended claim 1 to limit 'the polymer adhesive to consisting of one or more block, random or alternating ethylene copolymers.' Applicant cites the specification at page 6, lines 22-25 for support of said amendment. While the examiner agrees the passage from the specification recites the terms "block," "random," and "alternating," the examiner disagrees that said passage provides adequate support for the claimed subject matter. In particular, the recitation of said term are in describing the definition of polymer:

The term "polymer" as used herein, generally includes but is not limited to, homopolymers, copolymers (such as for example, block, graft, random and alternating copolymers), terpolymers, and blends and modifications thereof.

Said passage does not in any way suggest the polymer *adhesive consists* of one or more block, random, or alternating *ethylene copolymers*. Thus, the examiner finds said passage inadequate support for the concept of the invention as presently claimed. Therefore, claims 1-14 are rejected as containing new matter.

Claim Rejections - 35 USC § 102/103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1771

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 6-10, and 14 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 2005/0147787 issued to Bailey et al.

Bailey discloses a carpet comprising a tufted primary backing, an adhesive layer, and a secondary backing (abstract). The adhesive is preferably a thermoplastic fabric layer that is melted to bond the tufted primary backing to the secondary backing (abstract). Said adhesive may be an ethylene copolymer such as ethylene-vinyl acetate and ethylene-methyl acrylate copolymers (section [0027]). The working examples teach nylon face fibers and polypropylene primary and secondary backings (sections [0044] and [0047]). In one embodiment the adhesive fabric is made of an ethylene-methyl acrylate copolymer resin Chevron SP 2220 (section [0045]). [Note US 5,670,561 issued to Scheibelhoffer et al. and US 5,855,985 issued to O'Donnell, which both teach Chevron SP 2220 has a methyl acrylate content of 20% by weight (Scheibelhoffer, col. 6, lines 43-51 and O'Donnell, col. 15, line 63-col. 16, line 3.)]

Thus, Bailey teaches the invention of claims 1, 2, 6-10, and 14 with the exception of the claimed melt index, tenacity, adhesion to polyamide, and fiber retention index. However, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., polymer adhesive of ethylene copolymers) used to produce the carpet. Like materials cannot have mutually exclusive properties. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed properties would obviously have been provided by the process disclosed by Bailey. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the

Art Unit: 1771

providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1, 2, 6-10, and 14 are rejected.

Claim Rejections - 35 USC § 103

8. Claims 3-5 are rejected under 35 USC 103(a) as being unpatentable over the cited Bailey reference.

While Bailey fails to explicitly teach the specified monomer amounts of the copolymer and terpolymer compositions, said limitations are deemed obvious over the prior art. Specifically, it would have been obvious to one skilled in the art to employ the monomers in the amounts recited by applicant, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 3-5 are rejected as being obvious over the cited Bailey reference.

9. Claims 11 and 12 are rejected under 35 USC 103(a) as being unpatentable over the cited Bailey reference in view of US 4,522,857 issued to Higgins.

Bailey fails to explicitly teach the use of a reinforcing grid between the primary backing and the secondary backing. However, said use is well known in the art of carpets. For example, Higgins teaches a fiberglass scrim, nonwoven, or woven fabric as reinforcing or stabilizing layer embedded within the adhesive backcoat in between the primary backing and the secondary backing (col. 1, lines 48-55). Thus, it would have been readily obvious to one of ordinary skill in the art to employ such a fiberglass reinforcing layer in the Bailey carpet in order to enhance the dimensional stability of the carpet. Therefore, claims 11 and 12 are rejected.

Art Unit: 1771

10. Claim 13 is rejected under 35 USC 103(a) as being unpatentable over the cited Bailey reference in view of US 3,867,188 issued to Campbell et al.

Regarding claim 13, Bailey teaches the primary backing is preferably woven, but may also be a nonwoven fabric (section [0005]). However, Bailey fails to explicitly teach said nonwoven primary backing is a spunbond nonwoven. Campbell teaches it is readily known to employ spunbond nonwoven fabrics as primary backings for tufted carpets (col. 1, lines 49-59). Hence, it would have been readily obvious to employ a spunbond nonwoven as the primary backing of the Bailey invention since said nonwovens are conventional in the art and produce successful carpets. Therefore, claim 13 is also rejected.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1771

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL JUSKA
PRIMARY EXAMINER

cj
March 2, 2006